

TAB

MINUTES OF THE OCTOBER 3, 1973
MEETING OF THE INTERAGENCY CLASSIFICATION
REVIEW COMMITTEE

Participants: James B. Rhoads, Acting Chairman
David O. Cooke, Defense

[REDACTED]
Charles L. Marshall, AEC
Douglas Marvin, Justice
Marvin Smith, NSC Staff
Mark Spiegel, State

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Attending: Ambassador Robert Blake, State
William L. Brown, AEC

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Joseph J. Liebling, Defense
Adrienne Thomas, Archives

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Proceedings:

Announcements

1. Dr. Rhoads introduced Mr. Marvin Smith of the National Security Council Staff who is replacing Osborne Day on the Committee.
2. The amended State Department regulations implementing Executive Order 11652 have been approved unanimously by the Committee, and the State Department has been advised to proceed with publishing the changes in the Federal Register.
3. Dr. Rhoads announced that he had received a letter from Attorney General Richardson authorizing the downgrading of all Top Secret Justice Department records which are accessioned or which may in the future be accessioned by the National Archives. A copy of the letter will be sent to the Committee members.

Minutes of the Previous Meeting

Dr. Rhoads stated that Mr. Marshall had requested that paragraph 4 on page 3 be changed to read as follows:

"Mr. Marshall agreed, saying that when a new Chairman is appointed it will be a more opportune time to return the Executive Director to his original physical and organizational location."

Mr. Marshall stated that during the discussion of the Louis Kruh appeal case (page 5, following paragraph 9) he had made the point that a balance must be struck between the need for greater access to government records through declassification and the legitimate interests of protecting information for reasons of national security.

Report of the Ad Hoc Working Group on Exemption Authority and Classification Guides

Dr. Rhoads introduced Ambassador Robert Blake, Chairman of the working group on Exemption Authority and Classification Guides.

Ambassador Blake outlined the findings of the working group and its five major recommendations.

- (1) Exemption authority should not be separated from Top Secret classification authority.
- (2) Exemption should continue to represent a personal determination by a Top Secret classifier.
- (3) A subcommittee should be established to investigate methods of handling scientific and technical information.
- (4) Working groups should be established to determine standard criteria for classification and exemption of information in the following categories: foreign relations, national security policy, communications, and intelligence.
- (5) Each department should annually survey all classification guides which have been issued by the Department and report the results of the survey to the ICRC within 20 working days after January 1. Each department should annually review all Top Secret documents originated within the department during the past year and review all 10 year old documents which have been exempted from the GDS to assure the appropriateness of the classification and exemption markings.

Dr. Rhoads asked whether the recommendation to deal with scientific and technical information in some manner other than the current classification system could be accomplished without amending E.O. 11652.

Ambassador Blake responded that this is a question that would require investigation.

Mr. Smith inquired whether the annual review of Top Secret documents proposed in #5b would encompass all Top Secret documents or only those which had been exempted from the GDS.

Ambassador Blake said that all Top Secret documents were to be reviewed.

Mr. Marshall stated that recommendation 5a and b posed no problems for the AEC since this is done routinely. However, recommendation #1 can be accepted only if it is assumed that a classification guide approved by a Top Secret classifier represents a personal judgment by that classifier when the provisions of the guide are applied to documents. If a personal determination by a Top Secret classifier is required for each document, then the problem has not been solved. Since the AEC has only 24 Top Secret classifiers, guides must be used or the number of Top Secret classifiers greatly increased.

Mr. Liebling stated that classification guides, which are issued by DOD and which are used extensively by contractors, are reviewed periodically to determine their validity. Guides used in the scientific and technical areas do not present problems. It is often political areas where no guidelines exist. Although NSC papers may suggest sensitive areas they are usually quite broad and difficult to apply to specific documents.

Dr. Rhoads expressed the opinion that citing a classification guide as the authority for classifying a document prevents someone reviewing the appropriateness of the marking from determining who actually applied the provisions of the guide to the document in question.

Mr. Marvin stated that Mr. Dixon's opinion was that the act of classification is personal and nondelegable; therefore, the use of classification guides is a violation of the Executive order.

Mr. Marshall stated that in reality the originators of a document may be separated from those who set classification policy. In many instances it is the originator who is in the best position to know whether a document ought to be exempt. For this reason and others, AEC has long believed the exemption authority ought to be separated from Top Secret classification authority. However, if application of guides can be interpreted as a personal judgment by the originator of the guide, AEC can operate without the two being separated.

Mr. Cooke said that use of classification guides is completely consistent with the provisions of the NSC directive. He also suggested that DOD undertake a survey to determine how much material is being exempted under the guides.

Mr. Marshall suggested that the Committee postpone any decision on how to proceed with the question until the DOD survey is completed. It was agreed by all that further study was in order.

Barton Bernstein and William Stueck Appeals

Mr. Smith reported that the Committee's recommendations in both cases have been forwarded to NSC but there has been no response at this time. He indicated that he would push for a decision from NSC at the earliest possible date.

Dr. Rhoads stated that he felt that the ICRC should now vote on the Barton Bernstein appeal. When the case was first presented to the ICRC, a formal determination had been postponed on the assurances of the NSC staff that formal notification of the Staff's decision to withdraw objection to the declassification of the documents in question would be sent to the Committee within a short time. Since that notification had not been received, Dr. Rhoads felt that the Committee was obligated to resolve the case.

Mr. Smith raised the question of whether the Committee's recommendation to the NSC did not fulfill the ICRC's obligation to Mr. Bernstein.

Dr. Rhoads stated that the ICRC's responsibility could be discharged fully only by voting to release or keep closed the documents Mr. Bernstein had requested.

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A vote was then taken on whether to declassify the documents in question. AEC, DOD, CIA, Justice, State, and the Archives voted to declassify and release the documents; NSC abstained.

Dr. Rhoads said that the State Department and Professor Bernstein would be informed of the Committee's decision. Mr. Stueck will also be informed of the status of his appeal before the Committee.

There being no further business before the Committee, the meeting was adjourned.